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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

Ohio River Park,  
Allegheny County, Pennsylvania

Allegheny County, Pennsylvania,

RESPONDENT

Proceeding Under Sections 104  
and 122 of the Comprehensive  
Environmental Response,  
Compensation, and Liability Act  
of 1980 as amended by the  
Superfund Amendments and  
Reauthorization Act of 1986,  
Pub. L. No. 99-499,  
100 Stat. 1613 (1986)  
(42 U.S.C. §§ 9604 and 9622)

I hereby certify that the  
within is a true and correct copy  
of the original Administrative Order By  
filed in this matter. Consent

Ewen E. Poggisil  
Attorney for U.S. EPA

Docket No. III-92-16-DC

ADMINISTRATIVE ORDER BY CONSENT  
FOR FOCUSED REMEDIAL INVESTIGATION/FEASIBILITY STUDY

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TABLE OF CONTENTS

	<u>PAGE</u>
I. JURISDICTION . . . . .	2
II. STATEMENT OF PURPOSE . . . . .	2
III. EPA'S FINDINGS OF FACT . . . . .	3
IV. CONCLUSIONS OF LAW . . . . .	5
V. DETERMINATIONS . . . . .	6
VI. PARTIES BOUND . . . . .	6
VII. NOTICE TO THE COMMONWEALTH . . . . .	7
VIII. WORK TO BE PERFORMED . . . . .	7
IX. PUBLIC COMMENT . . . . .	12
X. DESIGNATED PROJECT MANAGERS . . . . .	12
XI. SITE ACCESS . . . . .	13
XII. QUALITY ASSURANCE . . . . .	15
XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY . . . . .	18
XIV. RECORD PRESERVATION . . . . .	19
XV. NOTIFICATION OF DELAY . . . . .	20
XVI. DISPUTE RESOLUTION . . . . .	21
XVII. RESERVATION OF RIGHTS . . . . .	22
XVIII. REIMBURSEMENT OF COSTS . . . . .	23
XIX. OTHER CLAIMS . . . . .	25
XX. OTHER APPLICABLE LAWS . . . . .	25
XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT . . . . .	26

Consent Order for Focused RI/FS  
for Bridge Portion of the  
Ohio River Park Site

Docket No. III-92-16-DC  
Page ii

	<u>PAGE</u>
XXII. LIABILITY OF THE UNITED STATES GOVERNMENT . . . . .	26
XXIII. MISCELLANEOUS . . . . .	27
XXIV. SUBSEQUENT MODIFICATION . . . . .	27
XXV. EFFECTIVE DATE . . . . .	28
XXVI. TERMINATION AND SATISFACTION OF ORDER . . . . .	28

AR200003

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**I. JURISDICTION**

- A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C, the latter of which was signed on September 13, 1987.
- B. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order.
- C. Entry by the Respondent into this Consent Order shall not constitute or be construed as an admission of liability and is subject to the provisions set forth below; provided, however, that the Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Order in any action by EPA to enforce the terms of this Consent Order.

**II. STATEMENT OF PURPOSE**

- A. In entering into this Consent Order, the mutual objective of EPA and Respondent is to complete satisfactorily a Focused RI/FS for the Bridge Portion of the Site. The Focused Remedial Investigation shall characterize the geology of the Bridge Portion of the Site, and determine the nature and extent of the contamination of the soils at or from the Bridge Portion of the Site. EPA shall prepare, for inclusion with the Focused RI and FS Reports, a determination of the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of any hazardous substances, pollutants or contaminants at or from the soils at the Bridge Portion of the Site ("Risk Assessment"). The Focused Feasibility Study shall determine and evaluate alternatives, if any, for remedial action to prevent, mitigate or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the soils at the Bridge Portion of the Site consistent with the Risk Assessment performed by EPA (including any adverse impacts to human health or the environment that may result from the activities

associated with remediation). The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") at 40 C.F.R. Part 300 and remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, the Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621.

- B. The activities conducted pursuant to this Consent Order are subject to approval by EPA and shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be conducted in compliance with all applicable EPA guidances, policies and procedures. Respondent shall not be responsible for preparing a Risk Assessment as set forth in EPA's RI/FS guidance.
- C. The activities conducted under this Consent Order shall provide all necessary information for the Focused RI/FS, and for a record of decision ("ROD") for selection of a remedial action addressing the soils in the Bridge Portion of the Site that is consistent with CERCLA and the NCP.

### III. EPA'S FINDINGS OF FACT

EPA has found the following which the Respondent does not admit:

- A. Respondent, Allegheny County (the "County"), is a political subdivision of the Commonwealth of Pennsylvania.
- B. The Site consists of three adjoining unoccupied pieces of property ("Parcels 1, 2 and 3") on the western end of Neville Island, which is located in the Ohio River approximately 10 miles downstream from Pittsburgh, Pennsylvania, as shown in Attachment A. The Site comprises approximately thirty-two (32) acres and includes all areas affected by Parcels 1, 2 and 3 where hazardous substances from such parcels have migrated or come to be located.
- C. The Bridge Portion of the Site consists of approximately one (1) acre, as shown in Attachment B, and is part of the approximately thirty-two (32) acre

Site. The Bridge Portion of the Site is in the southeast corner of the Site and is bounded on the north and west by, and includes, an existing County road named Grand Avenue which separates the Site into two parcels.

- D. Respondent wishes to replace the Coraopolis Bridge, a deteriorating bridge over the Back Channel of the Ohio River. Respondent intends to construct on the Bridge Portion of the Site a bridge approach roadway and abutment to the new Coraopolis Bridge.
- E. Except for a public right-of-way for Grand Avenue, Neville Land Company is the current owner of the Site, including the Bridge Portion of the Site.
- F. On or about May 22, 1940, Green Bag Cement Company of PA ("GBCC") acquired Parcels 1, 2 and 3. On or about March 25, 1946, GBCC transferred Parcels 1, 2 and 3 to Neville Island Land Company ("NILC"), a wholly owned subsidiary of Pittsburgh Coke and Chemical Company ("PC&C"). On or about December 10, 1964, NILC and PC&C merged; PC&C was the surviving corporation and became the owner of all three parcels. PC&C transferred Parcels 1 and 2 to Neville Land Company on or about August 14, 1970 and Parcel 3 to Neville Land Company on or about August 20, 1970. On or about March 4, 1977, Neville Land Company transferred all three parcels to the Respondent for development as a County park. During 1978, while the park was under development, the Respondent discovered hazardous wastes at the Site and ceased development of the park. The Respondent returned all three parcels to Neville Land Company on or about June 6, 1980.
- G. The Site was used as farmland until approximately the early 1950's, when the Site was first used for the disposal of industrial wastes. Industrial wastes were disposed of at the Site until approximately the mid-1960's. These wastes generally consisted of agricultural chemical wastes and coke oven by-products, such as tar decanter and tar acid sludges.
- H. In April 1989, the Pennsylvania Department of Natural Resources, under agreement with EPA, conducted a Site Inspection in accordance with the NCP. The Site Inspection indicated the presence of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, benzene, toluene, acetic acid, 2,4,6-trichlorophenol

and 2,4-dichlorophenol.

- I. On or about November 9, 1989, the Roy R. Weston Technical Assistance Team conducted sampling of the soil and drainage outfall at the Site for the EPA Region III Western Response Section. Such sampling data indicated the presence of hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, lindane, heptachlor, chlordane, arsenic, and polynuclear aromatic hydrocarbons (PAHs), including benzo(a)pyrene, benzo(a)anthracene and benzo(a)fluoranthene.
- J. Pursuant to Section 104(i)(6)(A) of CERCLA, 42 U.S.C. § 9604(i)(6)(A), the Health Assessment Team of the Pennsylvania Department of Health, under a cooperative agreement with the Agency for Toxic Substances and Disease Registry, conducted a health assessment for the Site and issued its report ("Health Assessment") on June 24, 1991. In preparing the Health Assessment, the Health Assessment Team used data from the sampling of the soil and drainage outfall at the Site that was conducted on November 9, 1989 by the Roy R. Weston Technical Assistance Team for the EPA Region III Western Response Section.
- K. The Health Assessment found that:
  - 1. Concentrations of PAHs, which were found in a coal tar seep on the Site, may present an increased risk of adverse health effects if Site workers or Site trespassers are chronically exposed to direct contact with the waste.
  - 2. Concentrations of lindane, heptachlor, chlordane, and arsenic present an increased risk of adverse health effects for children if they are chronically exposed to contaminated soils over a five-year period.
- L. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990, at 55 Fed. Reg. 35502.

#### IV. CONCLUSIONS OF LAW

- A. The Site is a "facility" as defined by Section 101(9)



of CERCLA, 42 U.S.C. § 9601(9).

- B. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. 9601(14), have been disposed of at the Site and are currently present there. Notwithstanding the foregoing, no admission is made by the Respondent that hazardous substances have been disposed of on the Bridge Portion of the Site.
- D. The presence of hazardous substances at the Site and the past, present and/or potential migration of hazardous substances at or from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

- A. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.
- B. EPA has determined that the Respondent is qualified to conduct the Focused RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the work properly and promptly if the Respondent complies with Section VIII of this Consent Order.

#### VI. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA, its officers, representatives, agents, and successors, and Respondent, its authorized representatives, agents, successors, officers, and assigns and upon all persons, contractors and consultants acting under or for the Respondent. No change in ownership of the Bridge Portion of the Site will in any way alter the status of the Respondent or its responsibilities under this Consent Order.
- B. The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, consultants, and supervisory personnel

AR200009

retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within one (1) week of the effective date of this Consent Order or on their date of retention, whichever is later, and shall condition all such contracts on compliance with the terms of this Consent Order. Notwithstanding the terms of any contract, Respondent is responsible for complying with this Consent Order and for ensuring that its contractors, subcontractors, laboratories, consultants, supervisory personnel and agents comply with this Consent Order.

**VII. NOTICE TO THE COMMONWEALTH**

EPA is notifying the Commonwealth of Pennsylvania (the "Commonwealth") that this Consent Order is being issued by providing a copy to the Commonwealth.

**VIII. WORK TO BE PERFORMED**

- A. Respondent shall perform a Focused RI/FS at the Bridge Portion of the Site, in accordance with the requirements of CERCLA, the NCP, this Consent Order (including any EPA-approved documents submitted as a requirement of this Consent Order) and relevant guidance documents.
- B. All response work performed pursuant to this Consent Order shall be under the direct supervision of qualified personnel.
  - 1. Within ten (10) calendar days after the effective date of this Order, Respondent shall notify the Environmental Protection Agency in writing of the identity and qualifications of the primary contractor(s) and/or supervisory personnel to be used in carrying out the work to be performed pursuant to this Order. Respondent has a continuing obligation to notify EPA of selection of contractors, subcontractors or supervisory personnel, and to provide EPA with the identity and qualifications of contractors, subcontractors and supervisory personnel, and any addition or change, hired to do work pursuant to this Order, within 10 days of such addition or change.
  - 2. EPA may, in its discretion, disapprove of the use of any contractor, subcontractor and/or

AR200010

supervisory personnel EPA considers to be unqualified or otherwise unable to perform the work, or to continue to perform any part of the work required by this Consent Order. In the event of a disapproval, Respondent shall notify EPA within 10 days of receipt of such disapproval of the identity and qualifications of the person, contractor, subcontractor or supervisory personnel that will replace the one that was disapproved.

3. In the event EPA subsequently disapproves of any replacement contractor, subcontractor or supervisory personnel, EPA reserves the right to conduct a complete Focused RI/FS or to enter into an agreement with, or issue an order to, any responsible party to perform all or any portion of a Focused RI/FS, in accordance with Paragraph (K), below, and to seek reimbursement from responsible parties for such work.
  4. EPA will provide a notice of acceptance of the prime contractor and subcontractor to the Respondent. This shall not interfere with EPA's right to subsequently disapprove of such contractor.
- C. Work shall be performed in accordance with the terms, conditions and schedule of a Focused RI/FS Work Plan (hereinafter "Work Plan") a draft of which is attached hereto, and which is subject to final EPA approval. The Work and Work Plan shall be consistent with the NCP, and with all relevant EPA guidance and regulations.
- D. EPA shall notify Respondent in writing of EPA's approval or disapproval of the Work Plan and the reasons for such approval or disapproval, including identified deficiencies where appropriate. However, the level of detail of the identified deficiency need not be so specific as to constitute a rewriting of all or part of the Work Plan. Failure of Respondent to provide a Focused RI/FS schedule that reflects an expeditious project length will be a reason for disapproval of the Work Plan.
- E. In the event of Work Plan disapproval Respondent shall, within thirty (30) days of receipt of the EPA notice, revise the Work Plan to respond to and/or correct the deficiencies in the Work Plan and resubmit the revised Work Plan to EPA.

- F. EPA shall notify Respondent in writing of EPA's approval or disapproval of the revised Work Plan and the reasons for such disapproval. Disapproval of the revised Work Plan may trigger the consequences set forth in Paragraph (M) below.
- G. Upon approval by EPA, the Work Plan shall be incorporated into this Order and the terms and schedules in the Work Plan shall become requirements of this Order.
- H. Respondent shall implement the Work Plan according to its approved terms, conditions and schedules, and shall prepare and submit the Focused RI and FS Reports for EPA's review as specified in the Work Plan and its accompanying schedule. The Work shall include the following elements:
  - 1. A Focused RI Report which includes, but is not necessarily limited to, (a) a summary of previous investigations, (b) a site description (including physical setting, climate, surface water hydrology and quality, geology, soils, and ecology), (c) all chemical concentration data collected during the Focused RI (including data collection methods, maps of sample locations, summary data tables, and a copy of chemical data in a computer-readable format), and (d) a summary of potentially exposed populations (including locations, current land uses, alternative future land uses, activity patterns, and subpopulations of potential concern).
  - 2. A Focused FS Report which utilizes the Risk Assessment prepared by EPA and which develops an appropriate range of waste management options for the soils in the Bridge Portion of the Site, if any, that are evaluated through the development and screening of alternatives. The report shall contain a comparative analysis of the remedial alternatives, if any, against the nine evaluation criteria as described in the NCP and EPA's RI/FS guidance.
- I. Beginning thirty (30) days subsequent to the date on which the Work Plan identified in (C) above is approved by EPA, the Respondent shall provide EPA with a progress report for each preceding calendar month. At a minimum, these progress reports shall include:

AR200012

Consent Order for Focused RI/FS  
for Bridge Portion of the  
Ohio River Park Site

Docket No. III-92-16-DC  
Page 10

- 1) a description of the actions that have been taken toward achieving compliance with this Consent Order and the tasks set forth in the approved Work Plan;
  - 2) all results of sampling, tests, analytical data (whether or not it has undergone Quality Assurance/Quality Control ("QA/QC") review and interpretations) and all other information received by the Respondent;
  - 3) a description of all data anticipated and activities scheduled for the next 30-day period; and
  - 4) a description of any problems encountered, any actions taken or to be taken to remedy or mitigate such problems, and a schedule of when such actions will be taken.
- J. Not less than 30 days prior to submittal of the draft Focused RI Report to EPA, Respondent and its contractor(s) shall have a consultation with EPA during which Respondent shall discuss the Focused RI Report, including its findings, and the format in which the Respondent will provide EPA with data it needs to prepare the Risk Assessment at the same time the Focused RI Report is submitted. The Respondent shall present to EPA a summary of the available documentation supporting the data at the meeting (except for data supplied by EPA or its contractors). Subject to Paragraph (XIII)(E), below, Respondent shall supply additional documentation requested by EPA to verify or refute claims within 30 days of the meeting.

EPA will provide a copy of its Risk Assessment to the Respondent for its review and comment. Comments on the Risk Assessment, if any, are due to EPA within thirty (30) days of the Respondent's receipt of the report from EPA.

Not more than fourteen (14) days after receiving EPA's Risk Assessment, Respondent and its contractors shall make a presentation to EPA at which Respondent shall discuss the draft Focused FS Report, including alternatives to be evaluated and proposed cleanup levels. Respondent shall be prepared at such meeting to present a summary of the data supporting their findings.

AR200013

- K. EPA will review the draft Focused RI and FS Reports submitted to it by Respondent. EPA will notify Respondent in writing of its approval or disapproval of this report or of any part thereof. In the event of any disapproval, EPA will specify the deficiencies in writing. However, the level of detail in the identified deficiency need not be so specific as to constitute a rewriting of all or part of the Focused RI or FS Report. Within thirty (30) days after receipt of notification of such draft report disapproval, the Respondent shall amend and submit to EPA a final report that responds to and/or remedies the specified deficiencies. If EPA disapproves of the final report or if the final report does not fully reflect EPA's directions for change, EPA shall either: (1) allow Respondent an additional opportunity to submit an acceptable final report; or (2) complete all or part of such final Focused RI or FS, or enter into an agreement with, or issue an order to, any responsible party to complete all or any part of such final Focused RI or FS, in lieu of Respondent, in which case EPA reserves the right to seek reimbursement from responsible parties for the costs thereof under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and/or any other appropriate relief. EPA will advise Respondent of its decision to proceed under (1) or (2), above. EPA's decision will be based on its sole discretion and shall not be subject to review.
- L. EPA and Respondent recognize that, while undertaking a Focused RI/FS, certain information and/or knowledge about the Bridge Portion of the Site or technology or investigative methods may arise from public meetings, data collection, etc., that may require modification to the Work Plan or to the field work. Minor modifications to the requirements of the Work Plan, that is, those that do not materially affect the nature, scope or timing of the work to be done, may thus be made by the Project Managers (as defined in Section (X) below). Such minor modifications must be made in conformance with Paragraph (XXIII)(B), below.
- M. In the event EPA disapproves of a proposed contractor, subcontractor, supervisory personnel, the Work Plan, the revised Work Plan or the Focused RI or FS Report under Paragraphs (B), (D), (F) or (K), above, EPA reserves the right to conduct a complete Focused RI/FS, or any portion thereof, in accordance with the requirements of CERCLA and the NCP, and to seek reimbursement of its costs pursuant to Section 107, 42

U.S.C. § 9607, and/or to seek any other appropriate relief.

- N. EPA reserves its right to disapprove of work performed by the Respondent and reserves its right to request that Respondent perform response actions in addition to those required by, or as modified in, the approved Work Plan, if it determines that such actions are necessary and that Respondent is qualified and can carry out such actions properly and promptly. In the event that Respondent declines to perform such additional and/or modified actions, EPA reserves the right to undertake such action(s) and to seek reimbursement of its costs and/or to seek any other appropriate relief.
- O. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement from responsible parties for any costs incurred or seek any other appropriate relief.
- P. A responsible official of Respondent shall sign the final Focused RI and FS, and shall certify that the information contained in the Focused RI and Focused FS is true, accurate and complete. The term "responsible official" means the Allegheny County Director of Engineering & Construction.

#### IX. PUBLIC COMMENT

Upon approval by EPA of the final Focused FS, EPA will make the administrative record for the proposed remedial action addressing the soils in the Bridge Portion of the Site, including the Focused RI and FS Reports and the Risk Assessment, available to the public for review and comment for, at a minimum, a thirty day period, pursuant to 40 C.F.R. § 300.430. Following the public review and comment period, EPA will notify the Respondent which remedial action alternative(s) is selected for the soils in the Bridge Portion of the Site.

#### X. DESIGNATED PROJECT MANAGERS

- A. Within ten (10) days of the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Manager. EPA's Project Manager shall have the authorities specified in 40 C.F.R.

AR200015

§§ 300.120 and 300.430. Each Project Manager shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Managers by controlled or certified mail, with copies to such other persons as EPA, the Commonwealth and Respondent may respectively designate.

- B. EPA and the Respondent shall each have the right to change their respective Project Manager(s). Such change shall be accomplished by notifying the other party in writing at least ten (10) days prior to the change.
- C. The EPA-designated Project Manager shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.415.
- D. The absence of the EPA Project Manager from the area under study pursuant to this Consent Order shall not be cause for the stoppage or delay of work.
- E. On or before the effective date of this Consent Order, EPA will arrange for a qualified person to assist it in overseeing and reviewing the conduct of the Focused RI/FS as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a) ("oversight representative(s)").

#### XI. SITE ACCESS

- A. To the extent that property included in the area under study pursuant to this Consent Order is presently owned or controlled by parties other than Respondent, the Respondent shall use best efforts to obtain access agreements for the Bridge Portion of the Site from the present owners as soon as possible but no later than five (5) days of receipt of approval of the Work Plan. Such agreements shall provide reasonable access as detailed in Paragraph (C) below, for performance of Focused RI/FS activities for EPA, its authorized representatives, oversight representatives,

AR200016



representatives of the Commonwealth and the Respondent and its authorized representatives. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall so notify EPA, in writing, within ten (10) calendar days regarding all efforts undertaken to obtain access and the failure to obtain such agreements. EPA, solely in its discretion, may then take steps to provide such access.

- B. Best efforts as used in this section shall include, at a minimum, but shall not be limited to, a certified letter from Respondent to the present owners of such property requesting access agreements to permit Respondent and EPA and its authorized and designated representatives to access such property.
- C. EPA and its authorized and designated representatives, including its oversight representatives and the Commonwealth, shall have the authority to enter and freely move about all property owned or controlled by Respondent subject to this Consent Order at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Bridge Portion of the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. In addition, EPA and/or its representatives shall have, for the purposes specified above, the authority to enter, at all reasonable times, all areas at which records related to the performance of the Focused RI/FS are retained. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Confidentiality claims for any material so copied may be asserted in accordance with Section XIII of this Order. Nothing herein shall be interpreted as limiting the inspection and information gathering authority of EPA under Federal law.
- D. In the event that EPA takes over the work pursuant to Sections VIII(K), (M) or (N), above, and/or XII(D), below, Respondent agrees to allow EPA and its authorized representatives access to the Bridge Portion

AR200017

of the Site and to any portions of the Bridge Portion of the Site under their ownership or control for the purpose of conducting the Focused RI/FS, including, but not limited to, carrying out the activities specified in Paragraph (C), above.

- E. If Respondent acquires title to or control over any portion of the Bridge Portion of the Site to which it does not presently hold title or control, Respondent agrees that EPA shall have access rights to such property as specified in this Section.

## XII. QUALITY ASSURANCE

- A. While conducting sampling and analysis under the Work Plan, the Respondent shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," OSWER Directive 9355.3-01 (1988), including but not limited to quality assurance, quality control and chain of custody procedures in accordance with the guidance provided in "EPA NEIC Policies and Procedures Manual," dated May 1978, revised November 1986, EPA 330/978-001-R; "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plan," February 1983, QAMS-005/80; "A Compendium of Superfund Field Operations Methods," December 1987, OSWER Directive 9355-0-14; and Data Quality Objectives for Remedial Response Activities," March 1987, OSWER Directive 9355.0-7B, while conducting all sample collection and analysis activities required by this Consent Order.
- B. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. Further, as set forth in Section VIII of this Order, Respondent shall not commence sampling until EPA approves of the Work Plan.
- C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall at a minimum:
1. Use a laboratory(ies) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80;

AR200018

2. Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(ies), records and personnel utilized by the Respondent for analysis of samples collected pursuant to this Consent Order.
3. Prepare a Quality Assurance Project Plan ("QAPjP") for the sample collection and analysis to be conducted pursuant to this Consent Order. The QAPjP is to be submitted to the EPA Project Manager for review and approval prior to initiating any field investigations. The QAPjP and Field Sampling Plan ("FSP") must be submitted to EPA as part of the Focused RI/FS Work Plan required in Section (VIII)(C)(6), above. The purpose of the plan is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that the objectives are met. The guidances referenced in Paragraph (A), above, shall be used as guidance in the preparation of the QAPjP; additional guidance may be provided by EPA as requested.
4. Ensure that the laboratory(ies) analyzing samples required by this Consent Order use the methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." (Current copies are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 266-9180.) If any parameter to be analyzed for is not one of the parameters for which Contract Lab Program ("CLP") methods are available, or with respect to non-CLP samples as provided in item (9), below, the laboratory shall use methods which are EPA-approved (and which are to be described in the QAPjP).
5. Except with respect to non-CLP samples as provided in item (9), below, ensure that the laboratory(ies) analyzing samples pursuant to this Consent Order agrees to demonstrate its capability to perform analysis in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state

agency within the past six (6) months.  
Documentation of such PE sample analysis must be  
submitted to the EPA Project Manager for  
verification.

6. Conduct an audit of the laboratory(ies) that will analyze samples from the Bridge Portion of the Site at some point during the time the laboratory(ies) is conducting analyses (to be specified in the QAPjP). The audit will be conducted to verify analytical capability. Auditors shall conduct lab audits according to procedures available from the ESD QA Section. Audit reports must be submitted to the EPA Project Manager within fifteen (15) days of completion of the audit. The Respondent must report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondent knew or should have known of the deficiency. Laboratories which are Superfund Contract Labs ("CLP" Labs) need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the quality assurance and/or sampling plans. A report of the field audit must be sent to the EPA Project Manager within fifteen (15) days of completion of the audit. Respondent must report deficiencies and take corrective actions to correct such deficiencies within two (2) business days of the time the Respondent knew or should have known of the deficiency.
8. Provide data validation of analyses done by the laboratory(ies) (to be described in the QAPjP). This data validation shall determine data usability and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols the Respondent must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The

AR200020

appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Manager at the time sample results are provided to EPA.

9. Respondent shall be permitted to use non-CLP methods and procedures only as provided in "Data Quality Objectives for Remedial Response Activities," OSWER Directive 9355.0-7B.

- D. In the event that the Respondent fails to use the QA/QC practices and procedures as outlined herein, EPA reserves the right to conduct a complete Focused RI/FS or any portion thereof pursuant to its authority under CERCLA and the NCP and to seek reimbursement from any responsible party liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for the costs thereof and/or to seek any other appropriate relief.

#### **XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

- A. The Respondent shall make available to EPA the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to the implementation of this Consent Order, and shall submit all such results no later than the date that the next monthly progress report is due.
- B. At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the approved Work Plan. The Respondent shall notify EPA not less than thirty (30) days in advance of any such sample collection activity.
- C. EPA will determine the contents of the administrative record file for the selection of the remedial action. Respondent must submit to EPA all documents developed during the course of the Focused RI/FS upon which selection of the response action addressing the soils in the Bridge Portion of the Site may be based. Respondent shall, on or before the date of submission of the final Focused FS Report, submit to EPA all documents or information which Respondent wishes EPA to consider in the selection of a remedy addressing the soils in the Bridge Portion of the Site, and which should be included in the administrative record for the

AR200021

remedy addressing the soils in the Bridge Portion of the Site which EPA will develop under Section 117 of CERCLA, 42 U.S.C. § 9617.

- D. At the request of EPA, Respondent shall provide any of the raw data and/or field notes under its custody or control relating to samples taken at the Bridge Portion of the Site, within thirty days of receipt of such request.
- E. All data, factual information and documents submitted by the Respondent pursuant to this Consent Order shall be subject to public inspection unless at the time of submission Respondent asserts a confidential business information or trade secret claim pursuant to applicable Federal law. Respondent may assert such a claim covering information or documentation requested by or provided under this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Physical, sampling, monitoring and analytical data shall not be claimed as confidential by the Respondent. Further, information to be included in the administrative record shall not be claimed as confidential. Information subject to such a claim of confidentiality will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to the Respondent.
- F. Nothing in this Order shall limit EPA's information gathering authority under Federal law.

#### XIV. RECORD PRESERVATION

- A. The Respondent agrees to preserve, during the pendency of this Consent Order, all records and documents in its possession or in the possession of any of its divisions, officers, directors, employees, agents, contractors, consultants, successors and assigns that relate in any way to implementation of this Consent Order, or to hazardous substance management and/or disposal at the Bridge Portion of the Site, including raw data, despite any document retention policy to the contrary. Respondent will each use its best efforts to

obtain copies of all documents that relate in any way to the Bridge Portion of the Site and which are in the possession of its employees, agents, accountants, contractors, or attorneys. Upon receipt of written notice from EPA pursuant to Section XXVI.B that the Respondent has demonstrated and certified, to the satisfaction of EPA that all the terms of this Consent Order have been completed, Respondent shall provide to EPA all records and documents described above.

- B. Within twenty (20) days of the effective date of this Consent Order, Respondent shall designate a custodian ("Custodian") for all such records and documents and shall notify EPA of the identity of that Custodian. Respondent may change its Custodian of records and documents upon written notification to EPA of such change.
- C. Respondent further agrees that any agreement between Respondent and an agent, contractor or consultant relating to performance of work under this Consent Order shall require in writing said agent, contractor or consultant to maintain and preserve during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records and documents within its respective possession which relate in any way to this Order or to hazardous substance management and disposal at the Bridge Portion of the Site.
- D. Respondent shall not destroy any records relating to this Consent Order.

#### XV. NOTIFICATION OF DELAY

The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible but no later than two (2) business days after Respondent or any of its agents or contractors becomes aware of such delay, or through the exercise of due diligence should have become aware of such delay, and in writing no later than seven (7) days after Respondent or any of its agents or contractors becomes aware, or through the exercise of due diligence should have become aware, of such a delay or anticipated delay. The written notification

shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent (if applicable), the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid and minimize any such delay.

#### **XVI. DISPUTE RESOLUTION**

- A. The resolution of any dispute concerning this Order between the Respondent and EPA shall be conducted in accordance with this Section.
- B. If the Respondent objects to any EPA notification or action under this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action. Said notice shall set forth the specific points of the dispute, the position Respondent is maintaining should be adopted as consistent with the requirements of this Consent Order and the NCP, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. Receipt by EPA of such notification shall constitute "initiation of Dispute Resolution procedures" for the purposes of this Consent Order.
- C. EPA and the Respondent shall have an additional fourteen (14) days from the initiation of Dispute Resolution procedures to reach agreement. If EPA determines that a decision is particularly complex and that more time is necessary for resolution, EPA can, in its discretion, provide fourteen (14) additional days for dispute resolution. If agreement cannot be reached on any issue within this fourteen (14) or twenty-eight (28) day period ("the resolution period"), EPA shall provide a written statement of its decision to the Respondent. Receipt of such statement of decision by Respondent shall constitute "resolution" of the dispute as that term is used in this Consent Order.
- D. Following resolution of the dispute, Respondent shall perform the work that was the subject of the dispute in accordance with EPA's decision.

AR200024



- E. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this Order.
- F. The existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.
- G. The existence of a dispute under this Section shall not expand the time frame for completing particular tasks under this Order or the Work Plan. Thus, in the event the Respondent prevails in the dispute, the task must be completed in the remaining amount of time originally specified in the Order or Work Plan unless the time frame is formally modified through the dispute resolution process.

#### XVII. RESERVATION OF RIGHTS

- A. Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including but not limited to the right to seek injunctive relief, and imposition of statutory penalties, fines and/or punitive damages. If, subsequent to receiving notice of a violation of this Consent Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and prior to the hearing provided for therein, Respondent cures the violation that was the subject of such notice, EPA, in its unreviewable discretion, may waive the statutory penalties applicable to such violation under Section 109 of CERCLA, 42 U.S.C. § 9609. Nothing in this Consent Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, EPA's right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

- B. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligation to comply with applicable local, State or Federal laws and regulations.
- C. As provided by this Consent Order, EPA expressly reserves its right to disapprove of actions taken by the Respondent pursuant to this Order and work performed by the Respondent, and reserves its right to request that the Respondent perform response actions in addition to those required by the approved Work Plan including approved modifications thereto, if it determines that such actions are necessary. In the event that Respondent chooses to perform such additional tasks, the approved Work Plan shall be revised and reviewed accordingly and the schedule for completion of the work set forth in the Work Plan shall be extended to the extent necessary to accommodate the performance of additional tasks. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions or to enter into an agreement with, or issue an order to, any responsible party to undertake such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP, to seek reimbursement from responsible parties for any costs incurred and/or to seek any other appropriate relief, including requiring Respondent to perform such actions. Further, EPA reserves the right to bring an action against responsible parties under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs, including oversight costs, incurred by the United States at the Bridge Portion of the Site not reimbursed by the Respondent.
- D. If EPA requests, Respondent shall incorporate and integrate information supplied by EPA into the final Focused RI and FS reports.

#### XVIII. REIMBURSEMENT OF COSTS

- A. Following each annual anniversary date of this Order, EPA shall submit to the Respondent an accounting of response costs, including oversight costs, paid by the U.S. Government with respect to this Consent Order.

Oversight costs shall include administrative, enforcement, inspection and investigative costs pursuant to Sections 104, 106 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607, including all costs paid by EPA, its agents or contractors in connection with EPA's oversight of the work done by the Respondent under the terms of this Consent Order including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, costs of compiling cost documentation, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, and review and approval or disapproval of reports.

- B. The amount billed shall be due and payable by Respondent no later than 30 calendar days from receipt of the accounting identified in Paragraph (A) above. Respondent shall, within 30 calendar days of receipt of the demand from EPA, remit a check for the amount of those costs made payable to the Hazardous Substances Superfund. Interest shall begin to accrue on the unpaid balance from that date, even if there is a dispute or an objection to any portion of the costs. Checks should specifically reference the Site and be addressed to:

EPA, Region III  
ATTENTION: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

A copy of the transmittal letter and check shall be sent to the EPA Project Manager and to the EPA Region III Regional Hearing Clerk at the address specified in Paragraph (XV) (B), above.

- C. EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

AR200027

**XIX. OTHER CLAIMS**

- A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Bridge Portion of the Site.
- B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).
- C. By consenting to the issuance of this Consent Order the Respondent waives any claim to reimbursement from EPA for all work performed and expenses incurred under this Consent Order it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

**XX. OTHER APPLICABLE LAWS**

- A. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State and Federal laws and regulations.
- B. Respondent shall, prior to any off-site shipment of hazardous substances from the Bridge Portion of the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Manager of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-site shipments when the total volume of such shipments will not exceed 10 cubic yards.
  - 1. The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to

be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the Focused RI/FS. Respondent shall provide all relevant information, including information under the categories noted in Paragraph (1) above, on the off-site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

**XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT**

Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees and assigns in carrying out activities required by this Consent Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

**XXII. LIABILITY OF THE UNITED STATES GOVERNMENT**

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this

#R200029

Order.

**XXIII. MISCELLANEOUS**

- A. Except as otherwise provided in this Order, the term "days" shall mean calendar days. If a due date for any task or deliverable falls on a Federal holiday or weekend, the due date for that task or deliverable shall be the next working day.
- B. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the Commonwealth immediately. In the event of unanticipated or changed circumstances at the Bridge Portion of the Site, Respondent shall notify the EPA Project Manager by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In addition to the circumstances for modification specified in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondent shall perform the Work Plan as modified or amended.

**XXIV. SUBSEQUENT MODIFICATION**

- A. This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA.
- B. Minor modifications to the requirements of the Work Plan, specifically those which do not materially or significantly affect the nature, scope or timing of the work to be performed, may be made by mutual agreement of the Project Managers. Any such modifications must be in writing and signed by both Project Managers. The effective date of the modification shall be the date on which the letter from EPA's Project Manager is signed.
- C. Respondent agrees that any request for modification of this Order, whether by amendment or minor modification, shall be accompanied by a statement of how such

AR200030

modification shall affect the Work Plan schedule.

- D. Following EPA approval of a modification to a schedule, Respondent agrees, within ten (10) days of receipt of the modification, to supply to EPA a revised Work Plan schedule and accompanying charts which shall reflect the approved modifications to such schedule.
- E. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order and any modifications thereto are, upon approval by EPA, incorporated into this Consent Order. Any non compliance with such EPA-approved or modified reports, plans, specifications, schedules, or other submissions shall be considered noncompliance with the requirements of this Consent Order.
- F. No informal advice, guidance, suggestions or comments by EPA, other than a formal approval as specified in Paragraphs (A) and (B), above, regarding reports, plans, specifications, schedules and any other writing submitted by the Respondent or regarding any other requirement of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with requirements of this Order, unless formally modified.

#### **XXV. EFFECTIVE DATE**

The effective date of this Consent Order shall be three business days following the date on which EPA forwards a fully executed true and correct copy to Respondent via overnight delivery.

#### **XXVI. TERMINATION AND SATISFACTION OF ORDER**

- A. When Respondent believes that all of the requirements of this Consent Order have been completed, Respondent shall give written notice to EPA ("Respondent's termination petition").
- B. The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA,

Consent Order for Focused RI/FS  
for Bridge Portion of the  
Ohio River Park Site

Docket No. III-92-16-DC  
Page 29


following receipt of Respondent's termination petition, that the Respondent has demonstrated and certified, to the satisfaction of EPA, that all the terms of this Consent Order have been completed. This notice shall not, however, terminate Respondent's obligation to comply with Sections XIV (Record Preservation), XVII (Reservation of Rights), and XIX (Other Applicable Laws).

IT IS SO AGREED AND ORDERED:

DATE:

2/21/92

BY:



EDWIN B. ERICKSON  
REGIONAL ADMINISTRATOR  
U.S. EPA  
REGION III

AR200032



Consent Order for Focused RI/FS  
for Bridge Portion of the  
Ohio River Park Site

Docket No. III-92-16-DC  
Page 30

The undersigned hereby certify that they are authorized to execute this Consent Order on behalf of Allegheny County, Pennsylvania and to bind Allegheny County, Pennsylvania to the terms and conditions herein.

ALLEGHENY COUNTY, PENNSYLVANIA

Date: Feb 3, 1992

BY: Herbert C. Higginbotham II  
Herbert C. Higginbotham II, P.E.  
Director, Department of Engineering  
and Construction  
County of Allegheny  
501 County Office Building  
Forbes Avenue & Ross Street  
Pittsburgh, Pennsylvania 15219

APPROVED AS TO FORM:

Date: 2-4-92

Howard M. Louik  
Name: HOWARD M. LOUIK  
Title: Assistant County Solicitor

Date: 2-4-92

Ira Weiss  
Name: IRA WEISS  
Title: County Solicitor

AR200033